

ST 01-0002-GIL 01/04/2001 SALES FOR RESALE

Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b). (This is a GIL.)

January 4, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 25, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are requesting a written ruling on accepting a resale certificate for a maintenance contract covering locations in Illinois. We are not requesting a ruling on the taxability of the maintenance contract. We have already established that it is taxable in Illinois.

We have entered into a maintenance agreement (copy attached) with one of our customers, COMPANY, whose main office is located in STATE, covering 38 locations in 16 states. One of the locations is in Illinois. The reason for the flat rate billing covering all locations is that we are having difficulty keeping track of changes and/or relocation of the equipment.

We are questioning whether we should accept a STATE resale certificate. We understand that PERSON is at least a part owner in all of these locations. It seems he would be reselling to himself as the end user. We also feel we should charge tax at the rate for the state in which the equipment that is covered under the contract is located.

PERSON feels that we should accept a STATE resale certificate for any tax owed on this contract, since he owns the contract and the full amount is billed to his main office in STATE. He has informed us that he will be responsible for billing each location and remitting the sales/use taxes to the appropriate states.

We have been trying to resolve this issue for several months and would appreciate a quick response. If you have any questions you can reach me at #####.

Thank you.

You state in your letter that you have established that the maintenance agreement you sell in Illinois is taxable. We do not have enough information to confirm your decision. The following is general information regarding the taxability of maintenance agreements in Illinois.

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3), enclosed.

Software maintenance agreements are taxed as sales of canned software if they provide for updates of software and the updates are not separately stated and taxed. Canned software can be purchased for resale, but valid resale certificates must be provided.

Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b), enclosed. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of-State Purchaser
 - A) purchaser's registration number with the Illinois Department of Revenue; or
 - B) purchaser's resale number issued by the Department of Revenue; or
 - C) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

If you know a resale certificate to be defective, you should collect Illinois tax from your customer and remit it to Illinois.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.